

#### **REMARKS/ARGUMENTS**

This Amendment is responsive to the Office action dated June 23, 2008, setting forth a shortened three month statutory period for reply with a two month extension of time expiring on November 23, 2008. Since November 23, 2008 fell on a Sunday, this response is submitted on Monday, November 24, 2008, and is submitted with a petition for a two month extension of time. After entry of this Response, claims 1-12, 14-34, and 62 remain pending in this application, with claim 1 being an independent claim, claim 13 previously cancelled and claims 35-61 and 63-64 previously cancelled.

##### I. Claim Rejections under 35 U.S.C. § 112

Claim 1 is rejected for various antecedent basis concerns, which are corrected herein through the amendment to claim 1. Should there be any further concerns, please contact the undersigned.

##### II. Claim Rejections under 35 U.S.C. § 103

Claims 1-4, 9, 13-16, 18-34, and 62 are rejected under 35 U.S.C. § 103 as being unpatentable by U.S. patent No. 5,930,775 issued to McCauley et al. (hereinafter "McCauley et al.") in view of Official Notice. For at least the following reasons, the Assignee respectfully submits that the claims are patentable over McCauley in view of Official Notice. Claim 1 is an independent claim, from which the other rejected claims depend directly or indirectly. Several limitations of independent claim 1 are not taught or suggested by McCauley, and Official Notice is insufficient to render the claims obvious for at least the reasons discussed below.

**A. Official Notice is insufficient to disclose or suggest the operation of obtaining an estimated liquidation time that includes applying a liquidation time value decision tree because it would change the principle of operation of McCauley to use a liquidation time value decision tree in place of the disclose historical average and (2) McCauley provides evidence that the limitation is not well known in the banking industry, and hence Documentary evidence is required in place of Official Notice.**

As acknowledged by the Examiner, McCauley does not disclose providing an estimate of the liquidation time between a last interest paid date for a loan and the receipt of the net proceeds from the sale of the property associated with the loan "wherein the operation of obtaining an estimated liquidation time includes applying a liquidation time value decision tree" as set forth in claim 1. Hence, the Examiner has relied on McCauley in view of Official Notice to reject claim 1.

*(1) Modification of McCauley to use a liquidation time value decision tree would require a substantial modification of the principle of operation of McCauley*

As set forth in our preceding response, McCauley uses historical average foreclosure timing for a geographic region to obtain foreclosure timing. See, e.g., McCauley col. 8, line 39-42 ("the *average time* a loan takes to foreclose in New Jersey is about 500 days"). Accordingly, as acknowledged by the Examiner, McCauley does not use a liquidation time value decision tree. MPEP § 2143.01 indicates that "if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie obvious*." It is respectfully submitted, that modification of McCauley would change the principle of operation of McCauley and hence McCauley in combination with Official Notice is insufficient to render claim 1 obvious.

Given that McCauley uses a historical average time value for liquidation timing and not a liquidation time value, modifying McCauley to use the liquidation time value would require substantial modification of McCauley. First, McCauley does not describe or appear to include data, such as the time factors of dependent claims 14-25 used in the liquidation time value decision tree, hence the databases of McCauley would have to be modified to include such data. McCauley does include a fair amount of data to obtain the various information set out in Fig. 6. Yet McCauley does not disclose liquidation time value decision tree data that would be necessary for McCauley to employ a liquidation time value decision tree. For example, dependent claims 14-25 of the present application set forth particular first through sixth time factors for defining the liquidation time value decision tree. The Examiner acknowledges that McCauley does not disclose a liquidation time value decision tree, yet the Office action at paragraphs 8-19 sites to sections of McCauley as disclosing aspect of claims 14-25, all of which depend from claim 1 and define various aspects of the liquidation time value decision tree. As discussed in detail below, however, it is respectfully submitted that none of the recited sections of McCauley set forth in paragraphs 8-19 refer to the application of the claimed first through sixth time factors. McCauley simply does not disclose a liquid time value decision tree and any particular time factors applicable to such a decision tree. Hence, McCauley would have to be modified to include such data substantially altering the principle of operation of McCauley as McCauley only relies on a historical liquidation timing averages for a given area.

Secondly, McCauley does not describe any formulation for using time factors or otherwise to employ a liquidation time value decision tree, hence McCauley would have to be modified to include such a liquidation time value decision tree. Again, McCauley would require substantial modification and an alteration of principle to set aside the historical average information and employ a liquidation time value decision tree. Finally, neither McCauley nor any other art of record suggests or discusses any negative impact from using a historical average in its REO timing.

Hence, for at least the reasons cited above, one of ordinary skill in the art would not be motivated to modify McCauley to conform to claim 1.

*(2) Official notice is insufficient to suggest modification of McCauley to include the liquidation time value decision tree*

The Examiner takes Official notice that use of a liquidation time value decision tree, along with several other limitations of the present claims, is old and well known in the banking industry as a convenient way for a company to evaluate or reduce financial or credit risk for certain loans. Pursuant to MPEP § 2144.03, Applicant respectfully traverses the Examiner's assertion that the liquidation time value decision tree as well as other limitations is so old and well known in the art that it is suitable to Official Notice. To begin, the only prior art of record relied on to reject claim specifically discloses use of a historical average to estimate liquidation timing. There is no suggestion or discussion in the McCauley reference to use a liquidation time value decision tree. Thus, for at least this reason, the Applicant respectfully requests the Examiner produce documentary authority and evidence for use of a liquidation time value decision tree in the context of claim 1 and to modify McCauley to include such a tree.

**B. McCauley does not yield the estimated financial outcome for a pool of loans McCauley and Official Notice is insufficient to render claim 1 obvious .**

As previously argued, McCauley provides no comprehensive assessment of a pool of loans. McCauley is only concerned with assessment of an individual nonperforming loan to assess options for the loan. Accordingly, McCauley does not "yield the estimated financial outcome for the pool [of loans]" as required by claim 1. In our preceding response and to highlight how claim 1 involves estimating a financial outcome for *a pool of loans* and to further emphasize how claim 1 is patentable over McCauley, claim 1 was amended to include the limitations of "executing the preceding operations of obtaining an estimated value, obtaining an estimated net proceeds, obtaining an estimated liquidation time, obtaining an estimated total debt, and deriving the difference for a plurality of additional loans from the pool of loans."

Additionally, claim 1 was amended to include "applying the estimated financial outcome from the sale of the property associated with the loan and the plurality of additional loans to yield the estimated financial outcome for the pool."

Recognizing that McCauley provides no discussion of assessment of a pool of loans, the Office action relies on Official Notice to disclose the above-recited limitations. The Examiner indicates that it is well known in the banking industry to evaluate financial or credit risk for certain loans. First, McCauley evaluates individual loans to determine an optimal investment plan for the loan. Claim 1 of the present application involves estimated a financial outcome for a pool of loans by evaluating several factors of loans in the pool. The only prior art relied on to reject claim 1 does not suggest let alone describe assessing a financial outcome for a pool of loans. Secondly, the ongoing credit crisis in the United States, and worldwide, was brought on, at least in part, by inadequacies in the banking sector's (e.g., Freddie Mac (assignee of McCauley) and Fannie Mae) monitoring and managing of risky mortgages. Hence, pursuant to MPEP § 2144.03, for at least these reasons, it is further requested that the Examiner provide documentary evidence to support the contention that applying all of the operations of claim 1 may be done to assess the financial outcome for a pool of loans.

All of the other claims rejected under 35 U.S.C. § 103 depend from and include all of the same limitations as independent claim 1, and are rejected under McCauley. Accordingly, for at least the same reasons as independent claim 1, McCauley in view of Official Notice is not sufficient to render dependent claims 2-4, 9, 13-16, 18-34, and 62 obvious.

For the reasons set forth above, it is respectfully submitted that claims 1-4, 9, 13-16, 18-34, and 62 are patentable under 35 U.S.C. § 102 over McCauley, in form for allowance, and such indication is respectfully suggested.

#### **C. Dependent claims 14-25**

Dependent claims 14-25 set forth particular first through sixth time factors for defining the liquidation time value decision tree. The Examiner acknowledges that McCauley does not disclose a liquidation time value decision tree, yet the Office action at paragraphs 8-19 sites to sections of McCauley as disclosing aspect of claims 14-25, all of which depend from claim 1 and define various aspects of the liquidation time value decision tree method. It is respectfully submitted that none of the recited sections of McCauley set forth in paragraphs 8-19 refer to the application of the claimed first through sixth time factors. McCauley simply does not disclose a liquid time value decision tree and any particular time factors applicable to such a decision tree.

Moreover, Official Notice is insufficient to disclose the recited limitations of the dependent claims.

More particularly, each of dependent claims 14, 16, 18, 20, 22, and 24, disclose first – sixth time factors accounting for payment plans, bankruptcy proceedings, litigation, foreclosure proceedings, delinquency status, and a marketing period, any of which are added to the last interest paid date as part of applying the liquidation time value decision tree. It is respectfully submitted that McCauley simply does not disclose a time factor for any of the above-recited first – sixth claimed categories, and does not disclose adding such time factors to the last interest paid date. None of the recited sections of McCauley set out in paragraphs 8-19 specifically address the limitations of claims 14, 16, 18, 20, 22 and 24, and none of McCauley disclose use of a liquidation time value decision tree.

Claims 15, 17, 19, 21, 23 and 25 depend from claims 14, 16, 18, 20, 22 and 24, respectively, and each claim very particularly describes methods by which the first – sixth time factors are determined. The particularities of these claims are not set out in McCauley.

Hence, for at least the reasons recited above, McCauley does not disclose all of the recited limitations of dependent claims 14-25, making these claims patentable over McCauley in view of Official Notice.

### III. Claim Rejections under 35 U.S.C. § 103

Claims 5-8 and 10-12 are rejected under 35 U.S.C. § 103(a) as unpatentable over McCauley et al. in view of Official Notice and further in view of U.S. patent publication No. 2002/0059136 A1 to May (hereinafter "May"). Claim 17 is rejected under 35 U.S.C. § 103(a) as unpatentable over McCauley et al. in view of Official Notice and further in view of U.S. patent publication No. 2001/0044773 to Sellers (hereinafter "Sellers"). For at least the following reasons, Assignee respectfully disagrees with these rejections. The rejection of these claims relies on basis of rejecting claim 1 under McCauley and Official Notice. Each of these claims depend from and include the limitations of independent claim 1. Accordingly, it is respectfully submitted that these claims are not rendered obvious by the combination of McCauley, Official Notice and May or Sellers as the combination does not disclose or suggest all of the limitations of the claims. Applicant request documentary support and evidence for the rejections derived from Official Notice as applied to claim 1.

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For the reasons set forth above, it is respectfully submitted that claims 5-8, 10-12, and 17 are patentable under 35 U.S.C. § 103 over the combination of McCauley, Official Notice and May, in form for allowance, and such indication is respectfully suggested.

IV. Conclusion

After review and consideration of the above arguments, claims 1-12, 14-34, and 62 remain in the application. In accordance with the arguments set forth herein, the Assignee respectfully submits the application and all pending claims are in condition for allowance and requests such prompt allowance.

A petition for a two month extension of time accompanies this Amendment and Response. Accordingly, please charge Deposit Account number 04-1415 in the amount of \$490.00 for the two month extension of time. The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney.

Respectfully submitted,

Date: November 24, 2008  
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